



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 10, 1998

Mr. Steven R. Bird
City of Childress
P.O. Box 1087
Childress, Texas 79201

OR98-0658

Dear Mr. Bird:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114001.

The City of Childress (the "city") received a request for a complete police report and all information related to an event that occurred on January 1, 1998. You assert that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code, as well as sections 58.001, 58.102, 58.106, and 101.003 of the Family Code. We have considered the exceptions you claim and reviewed the information at issue.

First, the Family Code sections to which you cited are inapplicable to the requested information. Sections 58.001 and 58.102 provide for the collection and maintenance of a juvenile justice information system. These sections do not make the requested information confidential. Section 58.106(a) provides for the confidentiality of information contained in the juvenile justice information system as used and disseminated by the Department of Public Safety (the "department"). Furthermore, section 58.106(b) states that "[s]ubsection (a) does not apply to a document maintained by a juvenile justice agency that is the source of information collected by the department." Accordingly, we conclude that you may not withhold the requested information pursuant to any of the cited Family Code provisions.

We also note that the information is not confidential under section 58.007 of the Family Code which protects juvenile law enforcement records concerning conduct that occurred on or after September 1, 1997. You cite to section 101.003 of the Family Code which defines "child." However, this definition is found in Title 5 of the code which relates to suits affecting the parent-child relationship. The proper definition of "child" is found in section 51.02 of Title 3 of the code. Section 58.007 is also located in Title 3 of the code.

which pertains to juvenile conduct. Section 58.007 is inapplicable because the records do not involve a child as defined by section 51.02. *See* Fam. Code § 51.02 (“child” is a person “seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age”).

You also cite sections 552.101 and 552.102 to support withholding of the requested information. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Because the requested information is not information contained in a personnel file, section 552.102 is inapplicable.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

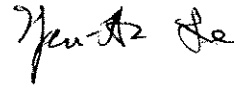
The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

After a review of the requested information, we conclude that the requested information is not excepted from public disclosure by privacy. Thus, you must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 114001

Enclosures: Submitted documents

cc: Ms. Tracey-Lynn Clough
Staff Writer
Arlington Morning News
112 Copeland Road, Suite 400
Arlington, Texas 76011
(w/o enclosures)